

Stanley E. Stein, Receiver for Holiday Inn Coliseum and Hotel & Restaurant Employees & Bartenders Local 118. Cases 8-CA-23290 and 8-CA-23334

June 12, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On January 31, 1991, the General Counsel of the National Labor Relations Board issued a consolidated complaint alleging that the Respondent in Case 8-CA-23334 violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 8-RC-14103. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The consolidated complaint further alleges, pursuant to the charge filed in Case 8-CA-23290, that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the Union over the terms of a new collective-bargaining agreement covering a different unit of employees.¹ The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On May 7, 1991, the General Counsel filed a Motion for Summary Judgment.² On May 9, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response on May 23, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

With respect to Case 8-CA-23334, the Respondent in its answer admits its refusal to bargain with the Union and to provide it with the requested information, but attacks the validity of the certification on the grounds, previously raised in the underlying represen-

tation proceeding, that it qualifies as a political subdivision under Section 2(2) of the Act and is therefore exempt from the Board's jurisdiction. It contends that in these circumstances, summary judgment is inappropriate.³

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Additionally, the Respondent denies that the information requested is relevant and necessary to the Union's role as exclusive bargaining representative of the unit employees. It is well established, however, that the employees' wage and employment information sought by the Union⁴ is presumptively relevant for purposes of collective bargaining and must be furnished on request.⁵ The Respondent has not attempted to rebut the relevance of the information requested by the Union. We therefore find that no material issues of fact exist with regard to the Respondent's refusal to furnish the information sought by the Union.⁶ Accordingly, we grant the Motion for Summary Judgment.

³The Respondent also contends that summary judgment is inappropriate with respect to the allegations raised in Case 8-CA-23290 concerning its alleged refusal to bargain over the terms of a new agreement covering the unit of employees described in fn. 1, *supra*. Having duly considered the matter, we find that the complaint allegations involving Case 8-CA-23290, and the Respondent's denials thereof, raise factual issues that can best be resolved following an evidentiary hearing before an administrative law judge. Accordingly, the General Counsel's Motion for Summary Judgment is denied with respect to Case 8-CA-23290. Case 8-CA-23290 shall be severed and remanded to the Regional Director for further appropriate action.

⁴The complaint alleges that the Union requested the Respondent to provide it with the following information: a list of all present employees in the certified unit; their job titles and/or job descriptions; each such employee's average total hours of employment on a weekly basis; each such employee's hourly wage, payment per event, or salary; sex; and age.

⁵See, e.g., *Trustees of Masonic Hall*, 261 NLRB 436 (1982); *Mobay Chemical Corp.*, 233 NLRB 109 (1977). Contrary to the Respondent's assertion in its brief to the Board, the sex and wage information sought by the Union concerning unit employees is relevant and necessary to the Union's performance of its collective-bargaining obligation. See *Westinghouse Electric Corp.*, 239 NLRB 106 (1978); *Safeway Stores*, 252 NLRB 1323 (1980), *enfd.* 691 F.2d 953 (10th Cir. 1982); *Reed & Prince Mfg. Co.*, 96 NLRB 850 (1951), *enfd.* 205 F.2d 131 (1st Cir. 1953), *cert. denied* 346 U.S. 887 (1953).

⁶We find no merit in the Respondent's contention that summary judgment with respect to the information request is inappropriate because in its December 14, 1990 written request for information, the Union allegedly sought information pertaining to all the Respondent's employees, not just those in the certified bargaining unit. Contrary to the Respondent, the December 14, 1990 letter, when read in its entirety, does not establish that the Union's information request was intended to apply to all the Respondent's employees, not just to the employees in the certified unit. Further, even if the Union's request could be construed as ambiguous or was intended to include information regarding nonunit employees, the Respondent's blanket refusal to comply with the request would not be justified. In this regard, the Board has held that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification and/or comply with the re-

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¹With respect to Case 8-CA-23290, the consolidated complaint alleges that since 1986, the Respondent has voluntarily recognized the Union as bargaining representative for employees in the following unit:

All laundry employees, maids, housemen and bellmen employed at the Respondent's 4742 Brecksville Road, West Richfield, Ohio, facility, but excluding all office clerical employees and guards and supervisors as defined in the Act and all other employees.

It further alleges that such recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period March 1, 1986, to March 1, 1989.

²On May 22, 1991, the Charging Party also filed a Motion for Summary Judgment relying, as support therefor, on the arguments contained in the General Counsel's motion and brief to the Board. Additionally, on June 3, 1991, it filed with the Board a "memorandum in support of Motions for Summary Judgment."

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a receiver appointed by a court of the State of Ohio to operate Holiday Inn Coliseum, a hotel and restaurant located at 4742 Brecksville Road, West Richfield, Ohio. During the 12-month period immediately preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of the above business operations, derived gross revenues in excess \$500,000 and purchased and received goods valued in excess of \$5000 directly from points located outside the State of Ohio.⁷ We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held November 30, 1990, the Union was certified on December 10, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All food and beverage employees, kitchen and dining room employees, and banquet employees, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusals to Bargain

Since on or about December 14, 1990, the Union has requested the Respondent to bargain and to furnish information, and since on or about January 16, 1991, the Respondent has refused. We find that these refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 16, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

quest to the extent it encompasses necessary and relevant information. See, e.g., *A-Plus Roofing*, 295 NLRB 967 fn. 7 (1989); *Barnard Engineering Co.*, 282 NLRB 617, 621 (1987).

⁷ Although the Respondent denies the jurisdictional monetary amounts alleged in complaint par. 2(B), the record in the underlying representation proceeding, of which we have taken official notice, establishes clearly that the Respondent meets the monetary amounts alleged in par. 2(B), and is subject to the Board's jurisdiction. We further note in this regard that in the underlying representation proceeding, the Board affirmed the Regional Director's finding, to which no review was sought, that the Respondent met the Board's jurisdictional standards.

unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Stanley E. Stein, Receiver for Holiday Inn Coliseum, West Richfield, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Hotel & Restaurant Employees & Bartenders Local 118 as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All food and beverage employees, kitchen and dining room employees, and banquet employees, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in West Richfield, Ohio, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 8-CA-23290 is severed from Case 8-CA-23334, and Case 8-CA-23290 is remanded to the Regional Director for further appropriate action.

⁸If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Hotel & Restaurant Employees & Bartenders Local 118 as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All food and beverage employees, kitchen and dining room employees, and banquet employees, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act and all other employees.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

STANLEY E. STEIN, RECEIVER FOR HOLIDAY INN COLISEUM